

Chief Judge Ricardo S. Martinez

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

KYRA EVANS,

Defendant.

NO. CR18-251RSM

PLEA AGREEMENT

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, Andrew C. Friedman and Francis Franze-Nakamura, Assistant United States Attorneys for said District, and Anthony Teelucksingh, Trial Attorney with the United States Department of Justice Computer Crime & Intellectual Property Section, and KYRA EVANS and her attorney, Corey M. Endo, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A):

1. **Waiver of Indictment.** Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charges brought by the United States Attorney in an Information.

2. **The Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter pleas of guilty to the following charges contained in the Information.

1 a. Conspiracy, as charged in Count 1, in violation of Title 18, United
2 States Code, Section 371;

3 b. False Statement, as charged in Count 2, in violation of Title 26,
4 United States Code, Section 7206(1).

5 By entering these pleas of guilty, Defendant hereby waives all objections to the form of
6 the charging document. Defendant further understands that, before entering her guilty
7 pleas, she will be placed under oath. Any statement given by Defendant under oath may
8 be used by the United States in a prosecution for perjury or false statement.

9
10 3. **Element of the Offenses.** The elements of the offenses to which
11 Defendant is pleading guilty are as follows:

12 a. The elements of Conspiracy, as charged in Count 1, in violation of
13 Title 18, United States Code, Section 371, are as follows:

14 First, beginning in or about April 2012 and ending in or about September 2017,
15 there was an agreement between two or more persons to commit a crime;

16 Second, the Defendant became a member of the conspiracy knowing of at least
17 one of its objects and intending to help accomplish it; and

18 Third, one of the members of the conspiracy performed at least one overt act.

19 The conspiracy alleged is a conspiracy to commit Wire Fraud and
20 Computer Fraud and Abuse.

21 The elements of Wire Fraud are as follows:

22 First, the Defendant knowingly devised a scheme or plan to defraud, or to obtain
23 money or property by means of false or fraudulent pretenses, representations, or
24 promises;

25 Second, the statements made or facts omitted as part of the scheme were material;
26 that is, they had a natural tendency to influence or were capable of influencing a person
27 to part with money or property;

1 Third, the Defendant acted with intent to defraud; that is the intent to deceive or
2 cheat; and

3 Fourth, the Defendant transmitted or caused to be transmitted a wire in interstate
4 or foreign commerce to carry out or attempt to carry out an essential part of the scheme.

5 The elements of Computer Fraud and Abuse are as follows:

6 First, the Defendant knowingly caused the transmission of a program, code,
7 command, or information to a computer without authorization;

8 Second, as a result of the transmission, the Defendant intentionally impaired the
9 integrity or availability of data, a program, a system, or information;

10 Third, the computer was used in or affected interstate or foreign commerce or
11 communication; and

12 Fourth, during any one-year period, the loss was at least \$5,000, or 10 or more
13 computers were affected.

14 b. The elements of False Statement, as charged in Count 2, in violation of
15 Title 26, United States Code, Section 7206(1), are as follows:

16 First, the Defendant made and signed a tax return for the year 2013 that she knew
17 contained false information as to a material matter;

18 Second, the return contained a written declaration that it was being signed subject
19 to the penalties of perjury; and

20 Third, in filing the false tax return, the Defendant acted willfully.

21 4. **The Penalties.** Defendant understands that the statutory penalties
22 applicable to the offenses to which she is pleading guilty are as follows:

23 a. For the offense of Conspiracy, as charged in Count 1: a maximum
24 term of imprisonment of up to five years, a fine of up to \$250,000, a period of
25 supervision following release from prison of up to three years, and a mandatory special
26 assessment of \$100. If a probationary sentence is imposed, the probation period can be
27 for up to five years. Defendant agrees that the special assessment shall be paid at or
28 before the time of sentencing.

1 b. For the offense of False Statement, as charged in Count 2: a
2 maximum term of imprisonment of up to three years, a fine of up to \$100,000, a period of
3 supervision following release from prison of up to one year, and a mandatory special
4 assessment of \$100. If a probationary sentence is imposed, the probation period can be
5 for up to five years. Defendant agrees that the special assessment shall be paid at or
6 before the time of sentencing.

7 Defendant understands that supervised release is a period of time following
8 imprisonment during which she will be subject to certain restrictive conditions and
9 requirements. Defendant further understands that, if supervised release is imposed and
10 she violates one or more of the conditions or requirements, Defendant could be returned
11 to prison for all or part of the term of supervised release that was originally imposed.
12 This could result in Defendant's serving a total term of imprisonment greater than the
13 statutory maximum stated above.

14 Defendant understands that, as a part of any sentence, in addition to any term of
15 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
16 restitution to any victim of the offenses, as required by law. Defendant further
17 understands that the consequences of pleading guilty may include the forfeiture of certain
18 property, either as a part of the sentence imposed by the Court, or as a result of civil
19 judicial or administrative process.

20 Defendant agrees that any monetary penalty the Court imposes, including the
21 special assessment, fine, costs, or restitution, is due and payable immediately and further
22 agrees to submit a completed Financial Statement of Debtor form as requested by the
23 United States Attorney's Office.

24 **5. Rights Waived by Pleading Guilty.** Defendant understands that by
25 pleading guilty, she knowingly and voluntarily waives the following rights:

- 26 a. The right to plead not guilty and to persist in a plea of not guilty;
27 b. The right to a speedy and public trial before a jury of her peers;
28

- c. The right to the effective assistance of counsel at trial, including, if Defendant could not afford an attorney, the right to have the Court appoint one for her;
- d. The right to be presumed innocent until guilt has been established beyond a reasonable doubt at trial;
- e. The right to confront and cross-examine witnesses against Defendant at trial;
- f. The right to compel or subpoena witnesses to appear on her behalf at trial;
- g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and
- h. The right to appeal a finding of guilt or any pretrial rulings.

6. **Ultimate Sentence.** Defendant acknowledges that no one has promised or guaranteed what sentence the Court will impose.

7. **Restitution.** The parties agree that they will recommend that the Court apportion liability for restitution owed to AT&T Mobility between Defendant and the defendants charged in related cases. Defendant agrees to pay restitution in the apportioned amount of \$280,200.00 (which shall not be joint and several with any other defendant). Said restitution shall be due and payable immediately and shall be paid in accordance with a schedule of payments as proposed by the United States Probation Office and ordered by the Court.

8. **Forfeiture of Assets.** Defendant agrees to forfeit to the United States immediately Defendant's right, title, and interest in any and all property, real or personal, that constitutes or is derived from proceeds traceable to the charge of Conspiracy to which Defendant is pleading guilty, including, but not limited to:

- a. the entry of a money judgment in the amount of \$280,200.00.

1 9. **Statement of Facts.** The parties agree on the following facts. Defendant
2 admits she is guilty of the charged offenses:

3
4 From July 2010 to October 2013, Defendant, KYRA
5 EVANS, was an employee of AT&T. Defendant worked at
6 AT&T's Customer Care telephone call center located in
7 Bothell, Washington. As part of Defendant's job at AT&T,
8 Defendant answered telephone calls from customers and
9 unlocked phones when customers met certain criteria set by
10 AT&T. Defendant was trained on the criteria that AT&T
11 used to determine whether a customer was eligible to have a
12 phone unlocked. Defendant was also trained on how to use
13 AT&T's unlocking program. Defendant was aware that
14 AT&T would suffer a financial loss if a customer had a phone
15 unlocked before he or she completed a service contract or an
16 installment plan, because AT&T likely would not receive the
17 money it was owed by that customer.

18 As a customer service representative, Defendant had
19 credentials (a username and password) to log into both her
20 workstation and a variety of proprietary programs on that
21 workstation that AT&T used to conduct business. Defendant
22 received training at AT&T on network security. As a result,
23 Defendant knew that her login credentials were for her use
24 only, and that AT&T would assume that only she was using
25 her login credentials to access her workstation and the
26 programs on that workstation.

27 In approximately September 2012, M.S., another
28 employee at AT&T's call center in Bothell, told Defendant
that she could make a lot of money "on the side" by
unlocking telephones. M.S. subsequently arranged a
telephone call between the Defendant, M.S., and an
individual who used the name "Frank." (Defendant now
understands that the man whom she knew as "Frank" is, in
fact, Muhammad Fahd.) "Frank" told Defendant he wanted
Defendant to unlock cell phones, that it was a good
opportunity, and that Defendant would be crazy to pass it up.
During that first telephone call, and several subsequent
telephone calls, "Frank" explained that he wanted to send

1 Defendant lists of international mobile equipment identity
2 numbers ("IMEIs") for cell phones. "Frank" explained that
3 he wanted Defendant to unlock these cell phones, in bulk,
4 using AT&T's unlocking application.

5 "Frank" gave Defendant detailed instructions as to
6 how Defendant was to communicate with him. At the outset,
7 "Frank" told Defendant to set up a new email account that
8 was not in her own name. Defendant followed "Frank's"
9 instructions and set up an email account with the address
10 yanghov687@gmail.com. Later, Defendant set up another
11 email account with the address yanghov687@yahoo.com.
12 Defendant used both accounts to communicate with "Frank's"
13 email accounts, which included unlockoutlet@gmail.com and
14 unlockoutlet@ymail.com. On October 14, 2012, "Frank"
15 used the account unlockoutlet@gmail.com to send Defendant
16 a picture of himself.

17 "Frank" and Defendant communicated regularly by
18 email and telephone. Beginning in September 2012,
19 Defendant regularly unlocked phones for "Frank." "Frank"
20 emailed Defendant lists of IMEIs for cellular phones for
21 Defendant to unlock. Most or all of "Frank's" emails
22 travelled from outside the United States to the State of
23 Washington. After "Frank" sent Defendant a list of IMEIs to
24 unlock, Defendant would cut and paste the list into a new file
25 and then would submit that file to AT&T's unlocking system
26 to unlock all of the IMEIs on the list. Defendant used
27 different workstations, such as workstations in a breakroom,
28 in order to avoid attracting attention to herself.

Defendant knew each time Defendant submitted an
unlock request in this fashion, Defendant was misrepresenting
to AT&T that the unlock request was on behalf of a customer
who met AT&T's unlocking criteria. Defendant also
understood that unlocking a phone when the eligibility
criteria were not satisfied was causing harm to AT&T by
depriving the company of future payments from the customer
if that customer chose to leave AT&T's cellular network.

1 In the Spring of 2013, AT&T implemented a new
2 unlocking system that made it more difficult to unlock IMEIs
3 for "Frank." In response, "Frank" told Defendant that he had
4 hired a computer programmer to design a program (malware)
5 that Defendant could put on AT&T's computer system to
6 unlock phones. To help develop the malware, Defendant
7 provided confidential information to "Frank" about AT&T's
8 computer system and unlocking procedures. "Frank," in turn,
9 told Defendant that he had provided the information to his
10 malware developer so the developer could tailor the malware
11 to work on AT&T's computers.

12 Defendant helped "Frank" test multiple versions of the
13 malware until the malware became functional in April 2013.
14 Once Defendant installed the malware, the malware had the
15 ability to use Defendant's AT&T credentials to unlock
16 phones without Defendant's active involvement. When
17 Defendant showed up to work, all Defendant had to do was
18 log into her workstation and activate the malware. The
19 malware would interact with AT&T's computer system and
20 perform the unauthorized unlocks in the background during
21 the day, and would communicate with "Frank," all while
22 Defendant performed her legitimate job responsibilities.

23 In addition to the unlocking malware, "Frank" had
24 Defendant use programs to capture additional information
25 about AT&T's computer system and about the network
26 credentials of other AT&T employees. For example, "Frank"
27 sent Defendant a program called FiddlerCap so that
28 Defendant could capture other AT&T employees' login
credentials

"Frank" also asked Defendant to recruit other AT&T
employees to help perform unauthorized unlocks. "Frank"
said he would pay Defendant \$15,000 if Defendant could
recruit another person. As a result, Defendant spoke to
another AT&T employee, D.W., who agreed to perform
unauthorized unlocks.

At the start of the scheme, in 2012, "Frank" told
Defendant to set up a fake business and a bank account for

1 that business to receive payments from him. "Frank" told
2 Defendant to create a fake invoice for every deposit that was
3 made into the fake business's bank account to create the
4 appearance that the money was payment for a genuine service
5 that Defendant's company had provided. Pursuant to
6 "Frank's" instructions, Defendant set up a fake company
7 called Jacinda Consulting and a bank account for the business
8 in the name Kyra J. Evans dba Jacinda Consulting. Between
9 2012 and October 2013, Defendant received \$280,200
10 through the fake business for her part in the illegal unlocking
11 scheme.

12 In September 2013, AT&T investigators discovered
13 the malware that M.S. and Defendant were using to conduct
14 unauthorized. Shortly after being questioned by AT&T's
15 investigators, Defendant left the company.

16 Defendant understands that AT&T's forensic analysis
17 shows that, between June 27, 2013, and August 27, 2013,
18 Defendant submitted 440,944 unlock requests, many of them
19 milliseconds apart. Defendant agrees that this is a reasonable
20 estimate of the number of cellular telephones that she
21 fraudulently unlocked during this two-month window.
22 Defendant understands that AT&T's forensic analysis shows
23 that the total number of cellular telephones fraudulently
24 unlocked by members of the scheme substantially exceeded
25 1,000,000, that more than 10 AT&T computers were affected,
26 and that, although AT&T estimates that its losses are in the
27 tens of millions of dollars (but still is working to calculate its
28 losses), AT&T unquestionably suffered more than \$5,000 in
losses.

29 Defendant filed tax returns for the years 2012 and
30 2013. On those tax returns, Defendant reported the salary
31 that she had received from her legitimate employment.
32 However, Defendant failed to report the payments that she
33 had received for participating in the fraudulent unlocking of
34 cellular telephones. Defendant agrees that the amount of
35 income that she failed to report was \$280,200. Defendant
36 knew that she was legally required to report this income from
37 these other companies. Based upon that amount of

1 unreported income, the additional tax Defendant should have
2 paid for those years was approximately \$66,961.00.

3 On February 10, 2014, Defendant filed a tax return for
4 the 2013 tax year that reported that taxable income of
5 \$12,793.00. That tax return failed to report \$208,200 of
6 payments that Defendant had received for her participation in
7 the fraudulent unlocking of cellular telephones. Defendant
8 knew that she was required to report this income. The tax
return, which was filed electronically, contained a written
declaration that it was signed under penalty of perjury.

9 The parties agree that the Court may consider for the purpose of sentencing
10 additional facts contained in the Presentence Report, subject to objections by the parties,
11 as well as any facts presented by either party at sentencing.

12 10. **United States Sentencing Guidelines.** Defendant understands and
13 acknowledges that the Court must consider the sentencing range calculated under the
14 United States Sentencing Guidelines and possible departures under the Sentencing
15 Guidelines together with the other factors set forth in Title 18, United States Code,
16 Section 3553(a), including: (1) the nature and circumstances of the offenses; (2) the
17 history and characteristics of the defendant; (3) the need for the sentence to reflect the
18 seriousness of the offenses, to promote respect for the law, and to provide just
19 punishment for the offenses; (4) the need for the sentence to afford adequate deterrence to
20 criminal conduct; (5) the need for the sentence to protect the public from further crimes
21 of the defendant; (6) the need to provide the defendant with educational and vocational
22 training, medical care, or other correctional treatment in the most effective manner;
23 (7) the kinds of sentences available; (8) the need to provide restitution to victims; and
24 (9) the need to avoid unwarranted sentence disparity among defendants involved in
25 similar conduct who have similar records. Accordingly, Defendant understands and
26 acknowledges that:

27 a. The Court will determine applicable Defendant's Sentencing
28 Guidelines range at the time of sentencing;

1 b. After consideration of the Sentencing Guidelines and the factors in
2 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
3 maximum term authorized by law;

4 c. The Court is not bound by any recommendation regarding the
5 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
6 range offered by the parties or the United States Probation Department, or by any
7 stipulations or agreements between the parties in this Plea Agreement; and

8 d. Defendant may not withdraw her guilty pleas solely because of the
9 sentence imposed by the Court.

10 11. **Tax Loss Amount.** The United States and Defendant stipulate and agree
11 that the correct amount of tax loss for purposes of sentencing is \$66,961.00. Defendant
12 understands that this Plea Agreement does not preclude the Internal Revenue Service
13 from assessing and determining any additional civil tax, penalties, and/or interest that
14 may be owed by Defendant.

15 11. **Acceptance of Responsibility.** At sentencing, *if* the district court
16 concludes Defendant qualifies for a downward adjustment acceptance for acceptance of
17 responsibility pursuant to USSG § 3E1.1(a) and Defendant's offense level is 16 or
18 greater, the United States will make the motion necessary to permit the district court to
19 decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b),
20 because Defendant has assisted the United States by timely notifying the United States of
21 her intention to plead guilty, thereby permitting the United States to avoid preparing for
22 trial and permitting the Court to allocate its resources efficiently.

23 12. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
24 the United States Attorney's Office for the Western District of Washington and the
25 Computer Crime & Intellectual Property Section of the United States Department of
26 Justice agree not to prosecute Defendant for any additional offenses known to the
27 government as of the time of this Agreement that are based upon evidence in its
28 possession at this time, and that arise out of the conduct giving rise to this investigation.

1 In this regard, Defendant recognizes the United States has agreed not to prosecute all of
2 the criminal charges the evidence establishes were committed by Defendant solely
3 because of the promises made by Defendant in this Agreement. Defendant agrees,
4 however, that for purposes of preparing the Presentence Report, the United States
5 Attorney's Office will provide the United States Probation Office with evidence of all
6 conduct committed by Defendant.

7 Defendant agrees that any charges to be dismissed before or at the time of
8 sentencing, and any other potential charges that were discussed but were not filed, were
9 substantially justified in light of the evidence available to the United States, were not
10 vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis for
11 any future claims under the "Hyde Amendment," Pub. L. No. 105-119 (1997).

12 13. **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
13 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
14 Agreement and Defendant may be prosecuted for all offenses for which the United States
15 has evidence. Defendant agrees not to oppose any steps taken by the United States to
16 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
17 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
18 Defendant has waived any objection to the re-institution of any charges in the Indictment
19 that were previously dismissed or any additional charges that had not been prosecuted.

20 Defendant further understands that if, after the date of this Plea Agreement,
21 Defendant should engage in illegal conduct, or conduct that violates any conditions of
22 release or the conditions of her confinement, (examples of which include, but are not
23 limited to, obstruction of justice, failure to appear for a court proceeding, criminal
24 conduct while pending sentencing, and false statements to law enforcement agents, the
25 Pretrial Services Officer, Probation Officer, or Court), the United States is free under this
26 Plea Agreement to file additional charges against Defendant or to seek a sentence that
27 takes such conduct into consideration by requesting the Court to apply additional
28 adjustments or enhancements in its Sentencing Guidelines calculations in order to

1 increase the applicable advisory Guidelines range, and/or by seeking an upward departure
2 or variance from the calculated advisory Guidelines range. Under these circumstances,
3 the United States is free to seek such adjustments, enhancements, departures, and/or
4 variances even if otherwise precluded by the terms of the plea agreement.

5 **14. Waiver of Appellate Rights and Rights to Collateral Attacks.**

6 Defendant acknowledges that by entering the guilty pleas required by this Plea
7 Agreement, Defendant waives all rights to appeal from her conviction and any pretrial
8 rulings of the court. Defendant further agrees that, provided the court imposes a custodial
9 sentence that is within or below the Sentencing Guidelines range (or the statutory
10 mandatory minimum, if greater than the Guidelines range) as determined by the court at
11 the time of sentencing, Defendant waives to the full extent of the law:

12 a. Any right conferred by Title 18, United States Code, Section 3742,
13 to challenge, on direct appeal, the sentence imposed by the court, including any fine,
14 restitution order, probation or supervised release conditions, or forfeiture order (if
15 applicable); and

16 b. Any right to bring a collateral attack against the conviction and
17 sentence, including any restitution order imposed, except as it may relate to the
18 effectiveness of legal representation; and

19 This waiver does not preclude Defendant from bringing an appropriate motion
20 pursuant to 28 U.S.C. § 2241, to address the conditions of her confinement or the
21 decisions of the Bureau of Prisons regarding the execution of her sentence.

22 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
23 attacking (except as to effectiveness of legal representation) the conviction or sentence in
24 any way, the United States may prosecute Defendant for any counts, including those with
25 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
26 Agreement.

27 **15. Voluntariness of Plea.** Defendant agrees that she has entered into this Plea
28 Agreement freely and voluntarily and that no threats or promises, other than the promises

1 contained in this Plea Agreement, were made to induce Defendant to enter her pleas of
2 guilty.

3 **16. Statute of Limitations.** In the event this Agreement is not accepted by the
4 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,
5 the statute of limitations shall be deemed to have been tolled from the date of the Plea
6 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea
7 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of
8 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

9 **17. Completeness of Agreement.** The United States and Defendant agree that,
10 except as to certain matters set forth during the plea colloquy in open Court, these terms
11 constitute the entire Plea Agreement between the parties. This Plea Agreement binds
12 only the United States Attorney's Office for the Western District of Washington and the
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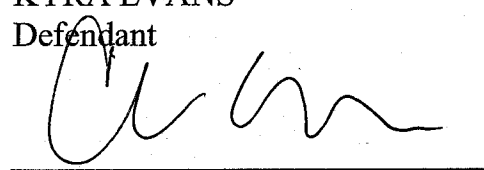
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1 Computer Crime & Intellectual Property Section of the United States Department of
2 Justice. It does not bind any other United States Attorney's Office or any other office or
3 agency of the United States, or any state or local prosecutor.

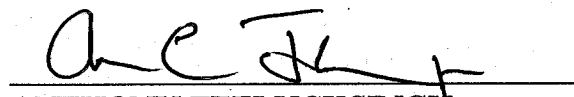
4 DATED: this 1st day of October, 2018.

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7 
8 KYRA EVANS
9 Defendant

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11 COREY M. ENDO
12 Attorney for Defendant

13 
14 ANDREW C. FRIEDMAN
15 Assistant United States Attorney

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17 FRANCIS FRANZE-NAKAMURA
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20 ANTHONY TEELUCKSINGH
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